

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

NOTICE OF ADJUSTMENT OF THE RATES OF
KENTUCKY-AMERICAN WATER COMPANY

) CASE NO. 91-361

O R D E R

On December 30, 1991, Kentucky-American Water Company ("Kentucky-American") filed an application requesting rehearing of the Commission's December 12, 1991 Order which accepted for filing Kentucky-American's rate application on November 27, 1991, the date that the deficiencies in the application were cured. Kentucky-American states that its rate application as tendered for filing on November 15, 1991 satisfied the Commission's minimum filing requirements and that the application was supplemented on November 27, 1991 by its responses to the Commission's deficiency letter. Kentucky-American further states that a motion was filed on December 4, 1991 requesting the Commission to accept the November 15, 1991 application, as supplemented by the November 27, 1991 amendments, as having been filed on November 15, 1991.

Kentucky-American argues that a November 15, 1991 filing date is required by KRS Chapter 278 et seq. because there is no statutory procedure for the Commission to accept applications for filing, but, rather, an application must be accepted on the date it is delivered to the Commission. Revenue Cabinet v. JRS Data Systems, Inc., Ky.App., 738 S.W.2d 828 (1987) is cited by Kentucky-American for the proposition that, "File means to deliver

to the office indicated." Kentucky-American further cites Commission Regulation 807 KAR 5:001, Section 3(5), which states as follows:

Amendment. At its discretion, the commission may allow any complaint, application, answer or other paper to be amended or corrected or any omissions supplied therein.

Kentucky-American alleges that this regulation "contemplates a relation-back of any such amendment; it does not provide that the filing should be deemed accepted as of the date of the amendment."

Kentucky-American also cites Union Light, Heat and Power Company v. Public Service Commission, Ky., 271 S.W.2d 361, 365 (1954), a case in which the Court struck down a Commission regulation on the grounds that "[W]here . . . the statute in itself prescribes the exact procedure the administrative agency may not add to or subtract from such a provision."

Based on the petition and being advised, the Commission hereby finds that our December 12, 1991 Order correctly found that, "Kentucky-American's rate application as received on November 15, 1991 did not comply with Commission Regulation 807 KAR 5:001, Section 6(6)." In its November 27, 1991 response to the Commission's deficiency letter, Kentucky-American acknowledged the existence of this deficiency as follows:

The only deficiencies in Kentucky-American's documents delivered to the Commission on November 15, 1991, were the absence of the date, maturity date and rate of interest on its note for its line of credit. These very minor omissions certainly do not seem to merit the rather drastic financial consequences inherent in a 12 day delay in accepting the documents for filing (November 15 to November 27).

This statement is a definitive admission that the rate application tendered on November 15, 1991 did not comply with all applicable Commission regulations. In any event, Kentucky-American's motion of December 4, 1991 requested, in the alternative, a November 15, 1991 filing date or a November 27, 1991 filing date. Our December 12, 1991 Order granted Kentucky-American the relief it requested.

The Commission's decision to not accept an application as being filed until all applicable regulations have been complied with is consistent with judicial precedent and Commission regulation. While the Court in Union Light, Heat and Power Company v. Public Service Commission, supra, invalidated a Commission regulation that did not mirror an exact procedure prescribed by statute, the Court upheld the Commission's refusal to implement new rates at the end of the statutory notice period due to the utility's failure to comply with all regulations requiring the filing of financial exhibits. In affirming the Commission's Order of February 29, 1952 prohibiting the implementation of the new rates, the Court stated:

An examination of the record reveals that the company did nothing more than comply with KRS 278.180 as to giving the notices, whereas, as has been heretofore pointed out, it neglected to follow any of the other requirements governing the procedures under [Commission regulation] Section 17(b) . . . nor did the company file with the Commission the detailed financial reports specified by Rules V-6 and VIII(b). The omission to follow any one of these regulations would justify the entry of the Order of February 29th. (emphasis added.)

Union Light, 271 S.W.2d at 365. Thus, once the Commission has determined that an application does not include all requisite

financial exhibits, the application cannot be accepted for filing and the statutory notice period will not commence.

The decision in Revenue Cabinet v. JRS Data Systems, *supra*, is clearly distinguishable. The issue in that case was whether a document was filed on the date of deposit in the mail or the date of receipt at the Revenue Cabinet. There was no claim that the document, when received, was deficient, or that the Revenue Cabinet had duly promulgated a regulation authorizing the rejection of a deficient document. The Commission's rejection of the rate application tendered by Kentucky-American on November 15, 1991, was pursuant to 807 KAR 5:001, Section 2(2), which provides that, "The secretary may reject for filing any document which on its face does not comply with the rules and regulations of the Commission." This regulation, as well as all our other regulations, has the force and effect of law.

The Commission's long-standing practice has been to review each application to determine its compliance with applicable regulations and to reject as deficient any not in compliance. In an effort to achieve equal, even handed treatment in reviewing each application, no attempt is made to analyze an omission to determine whether it is significant and the application rejected as deficient, or insignificant and accepted for filing.

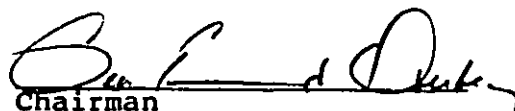
For such an analysis to be objectively performed, the Commission would have to conduct a detailed, fact-finding investigation of each omission. The time and effort expended on such an investigation, and then adjudicating motions, responses, and requests for rehearing related thereto, would ultimately delay

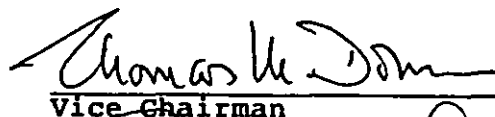
the Commission's investigation of, and decision on, the merits of pending cases. No utility is being required to comply with an unwritten, indefinite, or ambiguous listing of filing requirements. Rather, compliance is being required to the Commission's duly promulgated regulations which definitively specify the documents that must accompany an application.

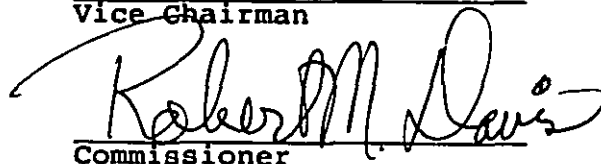
IT IS THEREFORE ORDERED that Kentucky-American's application for rehearing be and it hereby is denied.

Done at Frankfort, Kentucky, this 17th day of January, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director